

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

USGEN NEW ENGLAND, INC.,)

Plaintiff,)

vs.)

No. 04-12225 (RCL)

MICHAEL O. LEAVITT,)
in his capacity as Administrator)
of the U.S. Environmental Protection)
Agency, et al.,)

Defendants.)

**MEMORANDUM IN SUPPORT OF AGREED MOTION TO EXTEND
TIME TO RESPOND TO THE COMPLAINT**

Defendants Michael O. Leavitt, Administrator of the U.S. Environmental Protection Agency, the U.S. Environmental Protection Agency ("EPA"), and Region One of the EPA (collectively "Defendants"), respectfully request that this Court extend the time for Defendants to file their response to the Complaint pursuant to Fed. R. Civ. P. 12 until December 27, 2004, for the reasons set forth below:

1. Plaintiff USGen New England, Inc. ("USGen") filed its Complaint on September 22, 2004, seeking an order instructing one of the Defendants to conduct an evidentiary hearing regarding the terms of a National Pollution Discharge Elimination System ("NPDES") permit for one of its electrical generating facilities known as the Brayton Point Station.

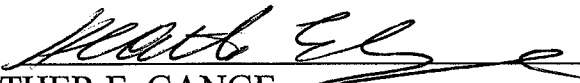
2. The Defendants' response to the Complaint is currently due by December 22, 2004, pursuant to Fed. R. Civ. P 12(a)(3). No scheduling order has been entered in this matter, and no trial date has been set.

3. Defendants would have difficulty responding by this date, however, due to holiday-related delays in obtaining required EPA and Department of Justice approvals. The Plaintiff and Defendants have conferred, and all agree to extend the date by which Defendants respond to the Complaint to **December 27, 2004**. The parties do not believe that they will be prejudiced by this extension, and note that no other submissions have been made and no proceedings have been scheduled in this matter that would be affected by the proposed extension.

WHEREFORE, the Court should extend the time for the Defendants to file their response to the Complaint to December 27, 2004.

Respectfully submitted,

Dated: December 16, 2004

By: 
HEATHER E. GANGE
U.S. Dept. of Justice
Environment and Natural Resources
Division
Environmental Defense Section
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*Counsel for Defendants MICHAEL O.
LEAVITT, Administrator; UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY; and REGION ONE of the
UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY*

CERTIFICATE OF SERVICE

I, Heather E. GANGE, certify that on this 16th day of December, 2004, true and correct copies of the attached AGREED MOTION TO EXTEND TIME TO RESPOND TO THE COMPLAINT and MEMORANDUM IN SUPPORT OF AGREED MOTION TO EXTEND TIME TO RESPOND TO THE COMPLAINT were served by U.S. Mail, postage prepaid, on the following:

WENDY B. JACOBS (No. 46273)
JOHN M. STEVENS (No. 30912)
RANDALL E. KROMM (No. 85630)
Foley Hoag, LLP
155 Seaport Blvd.
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and a courtesy copy was provided by electronic mail to:

Wjacobs@foleyhoag.com

A handwritten signature in black ink, appearing to read "Matt Elze", with a long horizontal flourish extending to the right.